

WICHITA POLICE DEPARTMENT

POLICY NO. 909

SUBJECT: USE OF OLEORESIN CAPSICUM (OC) SPRAY	
Effective Date: 05-09-2019	Distribution: All Personnel
Reviewed/Approved Date: 05-02-2019	Review Date: October 2020
Approved By: Executive Staff	Amends/Recinds: 12-07-2016
<i>This Policy is for departmental use only and does not apply in any criminal or civil proceeding. This Policy should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this Policy will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.</i>	

I. PURPOSE:

The purpose of this Policy is to establish guidelines and procedures governing Wichita Police Department officers' use of a chemical agent while performing their duties.

II. POLICY:

The policy of the Wichita Police Department ("Department") is to use only that amount of force objectively reasonable to effect an arrest, control a situation, or defend themselves or others from harm. The Department recognizes that combative, non-compliant, armed and/or violent subjects cause handling and control problems that require specialized training and equipment. Thus, the Department has adopted the use of less lethal force options to assist with the de-escalation of potentially violent confrontations. Any use of chemical agents must comply with the Department's Use of Force Policy.

Any police officer whose use of OC spray is not objectively reasonable will be subject to disciplinary actions and may be subject to civil and criminal liability.

III. PROCEDURES:

A. Use of Force Standard

The following are applicable use of force standards directly related to the deployment of OC spray:

1. The use of OC spray involves the application of force.
2. Each application of OC spray involves a separate, additional use of force.
3. Multiple applications of OC spray cannot be justified solely because that a subject fails to comply with a command, absent other indications the subject is about to flee, or poses an immediate threat to an officer.

4. Any decision to apply multiple applications of an OC spray must take into consideration whether a subject is capable of complying with the officer's commands.
5. The OC spray is not intended to replace the use of firearms when lethal physical force is necessary.

B. Authorization to carry and use OC Spray

1. Only OC spray meeting Wichita Police Department specifications and issued by the Department may be used by police officers in the course of law enforcement responsibilities, both on and off duty.
2. The use and carry of OC spray are restricted to officers who are trained and demonstrate proficiency of use.
3. All officers assigned to uniformed patrol shall carry OC spray once they have been issued the OC spray and have been trained in its proper use.

C. Permitted Use of OC Spray

Officers are only permitted to use OC spray in accordance with training in the following instances:

1. Against subjects who are actively resisting in a manner that, in the officer's judgment, is likely to result in injuries to themselves or others;
2. To incapacitate a subject who poses a threat of immediate physical injury to the officer, the subject, or another;
3. Against aggressive animals that pose a threat of physical injury to officers or others;
4. Department authorized training programs and/or demonstrations;

D. Restrictions on Use of OC Spray

Department issued OC spray may not be used in the following circumstances:

1. To effect the arrest of a person that is only passively resisting (e.g., going limp, offering no physical resistance);
2. Once a suspect succumbs, becomes incapacitated, or is restrained;
3. In crowded areas, except with supervisor approval after taking into account all of the circumstances, including possible exposure to involved bystanders;

4. To wake up an intoxicated individual;
5. To threaten or elicit information from a person;
6. On individuals with frail health or persons with known respiratory conditions;
7. In closed or poor ventilated spaces, unless objectively reasonable based on the totality of the circumstances;

Members are required to remove a subject exposed to pepper spray from a face-down position as soon as it is safe to do so.

E. Verbal Commands

1. A verbal warning, and time to allow the subject to comply; must be given prior to the use of OC spray; unless a warning would present a danger to the officer or others;
2. Verbal commands before, during, and after the application of the OC spray are important in order to de-escalate any situation and gain compliance and control of an actively resisting or aggressive subject;
3. After resistance has ceased, the subject must be reassured that nothing further will happen, and decontamination for the spray application is forthcoming.

F. Application Techniques

1. One or two-second bursts of the department issued OC spray should be directed: across the eyebrow line and bridge of the nose.
2. Direct discharge into the eyes should be avoided at a distance of three feet or less.
3. Except in an emergency, do not discharge a Department-issued OC spray when closer than three feet from the subject due to the increased risk for self-contamination or contamination of other officers at the scene.
4. An additional burst may be used if the initial burst proves ineffective. Allow a brief time for the agent to take effect before a second application. Be prepared to take other appropriate action should the spray fail to be effective.

G. Post-Use Decontamination and Treatment

1. Once the spray has been applied, commands must be given to direct the now confused and distracted subject: e.g., “Kneel down” or “Put your hands behind your back” and “Stop resisting arrest” tell the subject what is required.

2. Subjects should be assured the effects of the OC spray are temporary.
3. After the OC spray has been used and the subject has been restrained the subject should be moved to an uncontaminated area. If available, the affected areas of the subject should be flushed with water within 20 minutes.
4. Subjects should be exposed to wind/air immediately after deployment. Water may be used for flushing, if available; if wind/air are unsuccessful in decontamination.
5. Subjects should be asked if they suffer from any respiratory diseases or problems, such as asthma, bronchitis or emphysema. If a subject displays respiratory problems, the subject should be exposed to fresh air if possible and medical attention should be sought immediately. Subjects should be encouraged to breathe normally and relax.
6. While transporting a subject to a police or medical facility, the subject's condition should be monitored for signs of breathing difficulty, nausea, or other physical discomfort. A subject should never be left unattended until the effects of the pepper spray have completely diminished, or the individual indicates they have fully recovered from the effects of the spray.
7. Forty-five (45) minutes after use of the OC spray, subjects shall be inspected to determine whether or not additional decontamination or first aid measures are required.
8. Detention facility personnel shall be informed when a subject has been sprayed with OC spray.

H. Training and Certification in the Use and Operation of OC Spray.

1. Each Wichita Police Department officer who has been issued OC spray as part of the official equipment must be duly trained and qualified as a user by Department certified instructors prior to carrying or using the weapon.
2. In order to meet the quality standards, all trained police officers shall be recertified on an annual basis.

I. Reporting Required

1. After deploying OC spray, the officer shall notify a supervisor as soon as it is practical to do so.
2. After deployment of OC spray, the officer who discharged the spray shall comply with all reporting and investigation requirements outlined in the Department's Investigating Use of Force Policy, and shall include:

- a. The facts and circumstances which dictated the officer's use of force;
- b. Commands given to the subject, including any appropriate warning;
- c. The manner in which the subject refused to comply;
- d. Target;
- e. Witnesses to the discharge of the OC spray;
- f. Number of discharges, and length of each;
- g. The estimated distance at which the OC spray discharge(s) occurred;
- h. Extent, if any, of the subject's injuries;
- i. Description of first aid provided;
- j. The name of the supervisor notified, and
- k. Time of such notification.

J. Supervisory Responsibility

1. Department supervisors shall comply with all reporting and investigation requirements outlined in the Department's Reportable Use of Force Policy.
2. Any misapplication or misuse of the OC spray is subject to disciplinary action, along with potential criminal and civil liability.